

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION AT LAUTOKA**  
**COMPANIES JURISDICTION**

**HBM 10 of 2022**

**IN THE MATTER** of a Statutory Demand dated 03<sup>rd</sup> day of February 2022 taken out by **NEW WORLD PTE LIMITED** (“Respondent”) against **METALWORKS JOINERY LIMITED** (“Applicant”) and served on the Applicant on the 04<sup>th</sup> day of February 2022.

**AND**

**IN THE MATTER** of an application by the Applicant for an Order setting aside the Statutory Demand pursuant to Section 516 of the **COMPANIES ACT 2015**.

**BETWEEN:** **METALWORKS & JOINERY PTE LIMITED** a limited liability company having its registered office at 1 Veitari Road, Lautoka, Fiji Islands. **APPLICANT**

**AND:** **NEWWORLD PTE LIMITED** a limited company having its principal place of business in Ba. **RESPONDENT**

Appearances: Mr. Patel for the Applicant  
Mr. Tudravu K. and Ms. Tavakuru M. for the Respondent  
Date of Hearing: 13 July 2022  
Date of Ruling: 28 July 2022

## **RULING**

### **INTRODUCTION**

1. On 04 February 2022, Krishna & Co., as Solicitors for Newworld Pte Limited (“Newworld”), served on Metalworks Joinery Limited (“MJPL”) a statutory demand notice. The said demand notice is worded as follows in its relevant part:

**TAKE NOTICE** that **NEWWORLD PTE LIMITED**...demands from you to forthwith pay the sum of \$31,831.92 ....being outstanding debt particulars and details of **which is better known to you** and the legal cost of \$1500.00.

**UNLESS** therefore the debt is paid forthwith it is intended to present a petition to wind up your Company without further notice.

**DATED** this 3<sup>rd</sup> day of February 2022

Sgd. Krishna & Co. Solicitors for Newworld Pte Limited

2. Before me is an Originating Summons (Expedited Form) seeking to Set Aside Statutory Demand Notice dated 03 February 2022 and served on MJPL on 04 February 2022.
3. The Originating Summons was filed on 25 February 2022 by Samuel K. Ram Lawyers for and on behalf of MJPL.
4. The said Notice is filed pursuant to section 516 and section 517 of the Companies Act 2015 and under the High Court Rules 1988 as well as under inherent jurisdiction of this Court. The summons does not state which particular provision of the High Court Rules 1988 is being engaged in this case.
5. The application is supported by an affidavit sworn by Mr. Salesh Singh (“Singh”) on 25 February 2022 and filed on the same day.
6. New World Pte Limited (“Newworld”) is the respondent. Newworld has filed an affidavit of Daniel Mani (“Mani”) sworn on 17 May 2022 to oppose the application.

### **BACKGROUND**

7. Not much is in dispute in this case in terms of the facts. Newworld is a supermarket which offers for retail a wide variety of food and beverages and household merchandise.
8. It is not in dispute between the parties that in January 2015, MJPL and Newworld entered into a Credit Account arrangement. This arrangement allowed MJPL to take goods and merchandise from Newworld and pay for them later.
9. According to Singh, it was specifically agreed between the parties that MJPL would raise a local purchase order (“LPO”) for every purchase and that Newworld was only to release goods if an LPO was presented.
10. It was also agreed between the parties that, if MJPL were to be engaged by Newworld to carry out works for Newworld, then any fees or costs due to MJPL may be offset against MJPL’s account with Newworld.
11. At some point in 2016, MJPL learnt that Newworld was releasing goods on credit to one Daya Nand aka Dewa Sami (“Dewa”) on the MJPL Credit Account arrangement in question. Dewa is a minority shareholder of MJPL. However, according to Singh, Dewa’s purchases were not

authorized by MJPL. Singh, who is the majority shareholder of MJPL, questioned Newworld as to why it was releasing goods and merchandise to Dewa on the said Account.

12. However, according to Mani, the agreement was that goods would be released on a verbal confirmation from either one of the two directors or one out two shareholders or on an LPO. Since Singh and Dewa were the only two directors and shareholders of MJPL, Newworld was releasing the goods and merchandise to Dewa upon Dewa's verbal confirmation. This was perfectly in order.
13. Mani also refutes the allegation that there was an agreement that the value of any work which MJPL did for Newworld would be offset against the credit account in question. According to Mani, MJPL was never been engaged by Newworld.
14. Singh allegedly wrote the following letter dated 13 April 2016 to the Credit Department of Newworld.

13 April 2016

Credit Department  
New World Ltd  
Ba

**NEW WORLD TRADING ACCOUNT (FIJI WIDE) – METALWORKS & JOINERY LIMITED**

Further to our thorough reconciliation of all transactions related to above subject, it has been noted that some of the transactions do not match to our purchase made. This is a very serious concern now and I would like to put forward a proposed procedure for any further transactions effective from today.

Proposed procedures to follow to validate transaction;

- A credit limit of \$2,000 per month for all accounts combined (Fiji Wide) effective from today. No transactions to be entertained if limit is reached. The excess will only be applicable by a written request from the Managing Director, Sailesh Singh if required.
- LPO to be present while doing any transaction. If LPO does not have signature, no transaction to be processed. The valid signature on LPO will be only of SAILESH SINGH or DAYA NAND.
- Sailesh Singh and Daya Nand cannot do any transaction using their name as order reference even if present physically. This should be strictly notified to the Store Managers effective from today.
- No staff of Metalworks & Joinery Ltd or any other party to do transaction on behalf at any time. If LPO is present, then a confirmation to be taken from Managing Director, Sailesh Singh to validate the LPO. Phone contact is 9998328 or email is saileshsingh@connect.com.fj

The above measures are being taking seriously to avoid any form of dispute that may arise or any transactions. Please note all of above effective immediately from today as Metalworks &

Joinery Ltd will not take any responsibility for any transaction if above proposed procedures are not adhered to.

Please call the undersigned if you require any further clarifications on above.

Yours faithfully  
Sgd: Sailesh Singh  
Managing Director

15. Thereafter, MJPL ceased purchasing on the said Credit Account in order to clear some outstanding payments.
16. However, it appears that Newworld would continue to supply goods and merchandize to Dewa on that said Account. This caused Singh to again send an email to Newworld on 06 July 2017:

**Importance: High**

It has come to my attention that goods are being supplied on orders when this practice was revoked almost a year ago. This was done via email and letter and any orders to go through needed my prior approval before being processed.

I had made it very clear that I will not hold any responsibility if approvals are not given by me as a Managing Director of the Company. I am pulling out all invoices supplied on order which has no approval given by me and will disallow it from any payments made by us.

17. As far as Singh's affidavit goes, Newworld continued to supply goods and merchandise on the Credit Account in question without proper authorization from MJPL and despite MJPL's earlier protestations.
18. And so, on 01 September 2020, Singh sent the following email to Mani:

Hi Daniel

As discussed, requesting if you please forward details of purchases made without LPO. We require signed invoices for all purchases made without LPO to verify purchases.

Appreciate your assistance to this mater.

19. On 11 September 2020, Singh sent the following email to Mani again seeking clarification on the account:

**Importance: High**

Email is noted Pillay.

Please be mindful that project has not come to completion for our scope of works being the pool for all villas. The account adjustment would only be applicable once our scope of works has been completed successfully and COP raised for the same being the final payment. It has

been discovered that the lights installed in all pools were done incorrectly and needs to be changed with new ones. I do understand the responsibility comes under us as the Contractor for the scope but due to financial difficulties, I requested for payments made to supplier directly by client and same to be deducted from our contract. It will be only wise to see our part of works to completion and then New World contra accounts could be adjusted accordingly.

On the same note, I have raised queries for the groceries accounts with Daniel for transactions done without LPO's. At this stage we are not denying nor disputing the transactions but may do so if we are no satisfied with the informations provided. I had sent an email regarding this issue to Daniel almost 2 weeks ago and still awaiting on reply to confirm and verify all transactions. This is worth around \$36K. I suggest you get in touch with Daniel and have these information forwarded to us so we can sort this matter to the earliest. We had made several reminders for transactions done without proper LPO's and they were still happening.

I suggest we get the Vuda Pools works sorted to completion and you can hold payments accordingly once COP is issued until groceries accounts are verified and agreed to.

Requesting New World to provide us with the lights to have the works completed urgently please.

Regards

20. According to Singh, Newworld did not respond to the email above. This gave him the impression that Newworld was sorting out its records and cross-checking its accounts. However, to his utmost surprise, rather than clarify the accounts, Newworld would serve MJPL the statutory demand in question.
21. At paragraphs 29 to 34 of his affidavit, Singh sets out the basis of an offsetting claim as follows:
  - (a) MJPL apparently had won a contract to construct a swimming pool for a company called Chotubhai Patel Holdings Ltd (“**Chotubhai**”)
  - (b) Chotubhai is owned by the same shareholders who own Newworld  
In September 2020, MJPL and Newworld agreed that when NJPL received its progress payment for the pool project from Chotubhai that this could be off-set against the amount owing in the Credit Account with Newworld.
22. Mani deposes that if there was an internal dispute between Singh and Dewa, then that is their problem to sort out internally. He also highlights that Chotubhai and Newworld are two separate entities and that Chotubhai was not part of the alleged arrangement to offset payments due under the pool contract with any debt owing to Newworld.

## **THE LAW**

23. Section 516 of the Companies Act provides:

- 516.- (1) A Company may apply to the Court for an order setting aside a Statutory Demand served on the Company.
- (2) An application may only be made within 21 days after the demand is so served.
- (3) An application is made in accordance with this section only if, within those 21 days—
- (a) an affidavit supporting the application is filed with the Court; and
  - (b) a copy of the application, and a copy of the supporting affidavit, are served on the person who served the demand on the Company.

24. The normal grounds employed to support an application to set aside a statutory demand are set out in sections 517 which are:

- (a) that there is a *genuine dispute* between the Company and the respondent about the existence or amount of a debt to which the demand relates (section 517(1)(a)).
- (b) that the Company has an *offsetting claim* (section 517(1)(b)).
- (c) that there is a defect in the demand, substantial injustice will be caused unless the demand is set aside (section 517(5)(a)).
- (d) there is some other reason why the demand should be set aside (section 517(5)(b)).

#### **IS THERE A GENUINE DISPUTE ABOUT THE DEBT?**

25. Mr. Justice Jude Nanayakarra’s ruling in **Searoad Shipping Pte Ltd v On Call Cranes (Fiji) Ltd** [2020] FJHC 1025; HBM 36.2020 (11 December 2020) provides an excellent discussion of the various tests applied. The key points which I extract from the above to determine whether a genuine dispute is established for the purposes of section 517(1)(a) of the Companies Act, 2015 are as follows:

- (a) the threshold criteria for establishing the existence of a genuine dispute is a low one.
- (b) the court does not determine the merits of any dispute. Rather, the Court is only concerned with the question - whether there is such a dispute? (**In Edge Technology Pty Ltd v Lite-on Technology Corporation** [2000] NSWSC 471; (2000) 34 ACSR 301, Barrett J at [45]); **Fitness First Australia Pty Ltd v Dubow; Mibor Investments Pty Ltd v Commonwealth Bank of Australia** [1994] Vic Rp 61; [1994] 2 VR 290
- (c) the threshold for that is not high (see **In Edge Technology**). The Court need not engage in a rigorous and in-depth examination of the evidence relating to the plaintiff’s claim, dispute or off-setting claim (**Mibor Investments Pty Ltd v Commonwealth Bank of Australia**).
- (d) the threshold rather is similar to the “serious question to be tried” criterion which arises on an application for an introductory injunction or for the extension or removal of a caveat (**Evota Pty Ltd v Hanave Pty Ltd**), or that there are reasonable grounds indicating an arguable case (see **In Fitness First** (supra) at 127, Ward J cited **Panel**

**Tech Industries (Australia) Pty Ltd v Australian Skyreach Equipment Pty Ltd (N.2)**

- (e) as McLelland CJ said in **Eyota**:

This does not mean that the court must accept uncritically ...every statement in an affidavit “however equivocal, lacking in precision, inconsistent with undisputed contemporary documents or other statements by the same deponent, or inherently improbable in itself, it may be not having “sufficient prima facie plausibility to merit further investigation as to its [truth]” (cf **Eng Me Young v Letchumanan** [1980] AC 331 at 341], or “a patently feeble legal argument or an assertion of fact unsupported by evidence”: cf **South Australia v Wall** (1980) 24 SASR 189 at 194.

- (f) the task is simply to identify the genuine level of a claim (In Re Morris Catering Australia). As McLelland CJ said in **Eyota**:

... except in such an extreme case [i.e. where evidence is so lacking in plausibility], a court ... should not embark upon an enquiry as to the credit of a witness or a deponent whose evidence is relied on as giving rise to the dispute. There is a clear difference between, on the one hand, determining whether there is a genuine dispute and, on the other hand, determining the merits of, or resolving, such a dispute.....

- (g) hence, if a company’s claim is so “devoid of substance that no further investigation is warranted” (see **In Fitness First (supra) Panel Tech Industries (Australia) Pty Ltd v Australian Skyreach Equipment Pty Ltd (N.2)**), or is “plainly vexatious or frivolous”, it will fail in establishing that there is genuine dispute.

- (h) the court does not engage in any form of balancing exercise between the strengths of competing contentions. Hence, where the company has advanced an arguable case, and even where the case against the company seems stronger, the court must find that there is a genuine dispute ((see **In Fitness First (supra); CGI Information Systems & Management Consultants Pty Ltd v APRA Consulting Pty Ltd); Roadships Logistics Ltd v Tree**

- (i) A genuine dispute is therefore one which is bona fide and truly exists in fact and that is not spurious, hypothetical, illusory or misconceived. It exists where there is a plausible contention which places the debt in dispute and which requires further investigation. The debt in dispute must be in existence at the time at which the statutory demand is served on the debtor (**Spencer Constructions Pty Ltd v G & M Aldridge Pty Ltd** [1997] FCA 681; (1997) 76 FCR 452; Eyota).

**CONCLUSION**

26. That MJPL and Newworld had a credit account arrangement is not in dispute. That money is owed under the said account is also not in dispute. That there are monies owing to MJPL by Newworld which can be offset against the amount owing by MJPL to Newworld is hard to believe. There is no evidence that MJPL ever carried out any works for Newworld.

27. That there are monies owing to MJPL by Chotubhai on the pool-construction account – there is no clear supportive evidence. That the said monies if any, could be offset against the Newworld account – I do not accept. I say that because Chotubhai was not a party to that alleged arrangement.
28. I note from annexure SS4 of the founding affidavit of Singh that MJPL had requested Newworld to provide all signed invoices for all purchases made without LPO to verify purchases. I note also that a printout of an account statement setting out all purchases made between 01 January 2015 to 13 August 2017 shows that about ninety percent of the purchases made were by Dewa. I note also that Dewa has not sworn any affidavit to dispute any of these purchases.
29. It is hard for me to accept that there is a genuine and a serious dispute about the debt alleged.
30. The application to set aside statutory demand is dismissed with costs to the respondent which I summarily assess at \$800-00 (eight hundred dollars only).



.....  
Anare Tuilevuka  
**JUDGE**  
Lautoka

28 July 2022